

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CARLA A. CARSON
Claimant

VS.

VIA CHRISTI - OUR LADY OF LOURDES CAMPUS
Respondent
Self-Insured

)
)
)
)
)
)
)

Docket No. 216,388

ORDER

Respondent appeals from a preliminary hearing Order of November 19, 1996, wherein Administrative Law Judge Jon L. Frobish granted claimant medical benefits finding that claimant's injury of August 29, 1996, was a direct and natural result of the July 11, 1996, work-related injury.

ISSUES

Whether claimant suffered personal injury by accident arising out of and in the course of her employment on August 29, 1996.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing the Appeals Board finds as follows:

The Appeals Board finds that claimant has not proven by a preponderance of the credible evidence that the injury suffered on August 29, 1996, was a direct and natural consequence of the work-related injury of July 11, 1996.

Claimant suffered injury to her low back, shoulder, and neck on July 11, 1996, while working for respondent. This injury is not denied. Medical treatment was provided by D. W. Hellman, M.D., which included pain medication and physical therapy. Claimant attended two physical therapy sessions, terminating physical therapy when her condition improved. Claimant's last treatment with Dr. Hellman was on July 22, 1996, at which time she advised

the doctor she was improved. She was returned to work without restrictions. Claimant did not seek additional medical treatment until August 30, 1996, at the St. Francis Emergency Room. She advised the emergency room personnel that her neck complaints started approximately one day prior to the emergency room examination. Claimant also advised the respondent that her problems had occurred on August 29 while attempting to lift or get her child while she and her husband were looking at houses. Claimant denies these allegations by respondent regarding the lifting of the child. She does acknowledge her pain became worse shortly prior to her examination in the emergency room. Claimant alleged that her condition became worse at work while lifting patients, but failed to advise anyone at work of increased symptomatology on or about the alleged date of accident. Dr. Hellman, the original treating physician, advised that claimant's current neck injury was not related to her injury of July 11, 1996.

It is claimant's burden to establish her right to an award for compensation by proving the various conditions upon which her right depends. This must be established by a preponderance of the credible evidence. See K.S.A. 1996 Supp. 44-501 and K.S.A. 1996 Supp. 44-508(g); see also Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

The Appeals Board finds claimant has failed in her burden of proving that her injury of August 29, 1996, arose out of and in the course of her employment or was a reasonable and natural consequence of the original injury of July 11, 1996.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated November 19, 1996, should be and is hereby reversed and claimant is denied medical treatment for the injuries suffered on or about August 29, 1996.

IT IS SO ORDERED.

Dated this ____ day of January 1997.

BOARD MEMBER

c: Mark T. Schoenhofer, Wichita, KS
Eric K. Kuhn, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director